

RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY

RE: DESIGNATION OF THE NEW ENGLAND AQUARIUM CORPORATION AS REDEVELOPER OF PARCEL A-3N LOCATED IN THE DOWNTOWN WATERFRONT-FANEUIL HALL URBAN RENEWAL AREA, R-77.

WHEREAS, the Boston Redevelopment Authority, (hereinafter referred to as the "Authority"), has entered into a contract for loan and capital grants with the Federal Government under Title I of the Housing Act of 1949, as amended, which contract provides for financial assistance in the hereinafter identified project, and

WHEREAS, the Urban Renewal Plan for the Downtown Waterfront-Faneuil Hall Urban Renewal Area, R-77 (hereinafter referred to as the "Project Area"), has been duly reviewed and approved in full compliance with local and State law, and

WHEREAS, the Authority is cognizant of the conditions that are imposed in the undertaking and carrying out of projects with federal financing assistance under said Title I, including those prohibiting discrimination because of race, color, sex, religion or national origin, and

WHEREAS, the NEW ENGLAND AQUARIUM CORPORATION has expressed an interest and submitted a satisfactory proposal for the development of Parcel A-3N by said Corporation or by its wholly-owned subsidiary formed for the purpose, and

WHEREAS, the NEW ENGLAND AQUARIUM CORPORATION'S proposal was submitted in response to an advertisement in the Central Register, duly advertised and conducted in full compliance with local, State and Federal law, and

WHEREAS, the Authority is cognizant of Chapter 30, Sections 61 through 62H of the Massachusetts General Laws, as amended, with respect to minimizing and preventing damage to the environment.

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That the NEW ENGLAND AQUARIUM CORPORATION be and hereby is Designated as Redeveloper of Parcel A-3N located in the Downtown Waterfront-Faneuil Hall Urban Renewal Area City of Boston and identified on the attached Map, marked Exhibit "A", subject to:

- (a) Publication of all public disclosures and issuance of all approvals required by the Massachusetts General Laws, as amended.
 - (b) Submission within Two Hundred and Seventy (270) days in a form satisfactory to the Authority of the proposed development and construction schedule.
 - (c) The obtaining of all City, State and Federal applicable approvals.
2. That the Director be and is hereby authorized to execute a Land Disposition Agreement for Parcel A-3N in the Downtown Waterfront-Faneuil Hall Urban Renewal Area, R-77, with the New England Aquarium Corporation, pursuant to M.G.L. Chapter 30B, Section 1(b)(25), and subject to the Authority's usual terms and conditions.
 3. That disposal of said Parcel A-3N, by advertisement in the Central Register and the selection of the New England Aquarium Corporation's proposal is the appropriate method of making the land available for redevelopment.
 4. That it is hereby found and determined that the proposed development will not result in significant damage to or impairment of the environment, and further , that all practicable feasible means and measures have been taken and are being utilized to avoid or minimize damage to the environment.
 5. That the Redeveloper be and hereby is authorized to petition to the Board of Appeals for any zoning changes that may be necessary to complete the proposed development.
 6. That the Secretary is hereby authorized and directed to publish notice of the proposed disposal transaction in accordance with Section 105(E) of the Housing Act of 1949, as amended, including information with respect to the "Redeveloper's Statement for Public Disclosure" (Federal Form H-6004).

ATTACHMENT

Section 203 contains purchase price terms.

Section 205 specifies the Authority's right to receive damages on account of easements which may be taken in relation to the Central Artery Project.

Section 210 contains terms regarding the ability of the Authority's present licensee to continue operation on the site and for the Authority to collect payment therefrom until such time as the Authority approves the New England Aquarium's future development plans.

Section 302 contains terms relating to additional compensation in the event the Authority approves a greater FAR than 1.5 for the parcel.

SUMMARY:

The memorandum requests that the New England Aquarium Corporation be Designated as Recipient of Parcel A-24 in the Downtown Waterfront Parcel Land Use Renewal Act, R-77, including authorization to purchase a Land Disposition Agreement subject to the Authority's usual terms and conditions.

Parcel A-24 is a small parcel, consisting of 2700 square feet, located between the Harbor Tower Parking Garage and the New England Telephone Company Building along the Downtown Waterfront. Proposed renovation of this parcel was duly advertised in the Central Register. Proposals were due on January 2, 1993 at 12:00 noon.

One proposal was received for this parcel from the New England Aquarium Corporation. The acquisition of Parcel A-24 is seen as a long term element of the successful development of an enhanced aquarist facility and related commercial development of Central Wharf.

To address chronic visitor overcrowding and to improve the delivery of aquarist education, conservation and research programs, the New England Aquarium Corporation (the Aquarium) has undertaken a series of studies for the development of enhanced aquarist facilities.

Earlier this year, the Aquarium completed a comprehensive program and mission review effort called Aquarium 2000. The program planning effort affirmed the need to revitalize and expand the Aquarium's existing facilities at Central Wharf. In furtherance of this objective, the Aquarium has begun the facility planning process and filed an Environmental Notification Form with the NEPA unit of the Massachusetts

MEMORANDUM

**Taken Under Advisement
APRIL 29, 1993**

MAY 13, 1993

TO: BOSTON REDEVELOPMENT AUTHORITY AND
PAUL L. BARRETT, DIRECTOR

FROM: BRIAN DE LOREY, ASSISTANT DIRECTOR FOR
ECONOMIC DEVELOPMENT
VICTOR KAREN, DEPUTY DIRECTOR FOR
ECONOMIC DEVELOPMENT

SUBJECT: PARCEL A-3N IN THE DOWNTOWN WATERFRONT - FANEUIL
HALL URBAN RENEWAL AREA

SUMMARY: This memorandum requests that the New England Aquarium Corporation be Designated as Redeveloper of Parcel A-3N in the Downtown Waterfront-Faneuil Hall Urban Renewal Area, R-77, including authorization to execute a Land Disposition Agreement, subject to the Authority's usual terms and conditions.

Parcel A-3N is a sliver parcel, consisting of 3950 square feet between the Harbor Towers Parking Garage and the New England Telephone Company Building along the Downtown Waterfront. Proposed disposition of this parcel was duly advertised in the Central Register. Proposals were due on January 8, 1993 at 12:00 noon.

One proposal was received for this parcel from the New England Aquarium Corporation. The acquisition of Parcel A-3N is seen as a long term element of the successful development of an enhanced aquarium facility and related commercial development of Central Wharf.

To address chronic visitor overcrowding and to improve the delivery of aquatic education, conservation and research programs, the New England Aquarium Corporation (the Aquarium) has undertaken a series of studies for the development of enhanced aquarium facilities.

Earlier this year, the Aquarium completed a comprehensive program and mission review effort called Aquarium 2000. This program planning effort affirmed the need to enhance and expand the Aquarium's existing facilities at Central Wharf. In furtherance of this objective, the Aquarium has begun the facility planning process and filed an Environmental Notification Form with the MEPA unit of the Massachusetts

Executive Office of Environmental Affairs on September 30, 1992.

In view of the Aquarium's re-commitment to the Central Wharf site and its investment in a significant building enhancement and expansion planning effort, it is appropriate to consider the relationship of Parcel A-3N to the Aquarium as this small sliver commercial parcel provides the front door for the Aquarium onto Atlantic Avenue and eventually onto the proposed Park over the depressed Central Artery.

The Authority shall retain the right for its present licensee to remain on the property and shall receive rent therefrom until the New England Aquarium Corporation's future development plans for Parcel A-3N are approved by the Authority. In the longer term, the Aquarium requires the availability of Parcel A-3N as a link to the planned Surface Artery park and as a welcoming forecourt to its expanded facilities. The Aquarium plans no substantial construction on Parcel A-3N in the near future and any plans for eventual development would require the Authority's approval.

The agreed upon disposition price for Parcel A-3N is \$200,000 which is higher than the Authority's appraisal completed for the property. Accordingly, the Real Estate Office recommends approval. Furthermore, once the New England Aquarium undertakes future redevelopment of Parcel A-3N, the Authority could realize additional incremental proceeds.

It is therefore recommended that the Authority grant Designation to the Aquarium for Parcel A-3N and authorize the Director to execute a Land Disposition Agreement, subject to the Authority's usual terms and conditions.

Appropriate votes follow:

VOTED: That the Boston Redevelopment Authority adopts the attached resolution entitled, "Designation of the New England Aquarium Corporation as Redeveloper of Parcel A-3N in the Downtown Waterfront-Faneuil Hall Urban Renewal Area"; and

VOTED: That the Director be and hereby is authorized to enter into a Land Disposition Agreement between the Boston Redevelopment Authority and the New England Aquarium Corporation substantially in the form attached hereto, subject to the Authority's usual terms and conditions and is further authorized to execute any and all documents as he may determine to be in the best interest of the Authority to effectuate this designation.

1. "Instrument" shall mean the instrument of conveyance and all documents and instruments in connection therewith, including the deed, mortgage, and all other documents and instruments in connection therewith.

2. "Authority" shall mean the Board of Directors of the Authority, and shall include any committee or subcommittee thereof, and any officer or employee of the Authority, and any other person acting on behalf of the Authority.

3. "Deed" shall mean the instrument of conveyance, and shall include any instrument in connection therewith.

4. "Mortgage" shall mean the instrument of mortgage, and shall include any instrument in connection therewith.

5. "Land" shall mean the land, and shall include any interest in the land, and shall include any interest in the land, and shall include any interest in the land.

LAND DISPOSITION AGREEMENT

BY AND BETWEEN

THE

BOSTON REDEVELOPMENT AUTHORITY

AND

NEW ENGLAND AQUARIUM CORPORATION

Subject to all of the terms, conditions and covenants of this Agreement, the Authority agrees to sell and convey and the New England Aquarium Corporation agrees to purchase the property.

Section 1.01. Description of Land to be Conveyed

The Authority and the Redevelopment Authority agree that the land and property shall be conveyed in "as is" condition, free and clear of all encumbrances and liens, subject to any encumbrances and liens shown on the map.

Section 1.02. Purchase Price and Payment Thereof

The purchase price for the property shall be Two Hundred Thousand Dollars (\$200,000) and shall be paid in the following manner: (a) Cash in hand to the order of the Authority, with respect to the balance of the purchase price to be paid in installments.

Section 1.03. Title and Easements

The title and easements and delivery of possession of the property shall be conveyed to the New England Aquarium Corporation, and shall be subject to the terms and conditions of this Agreement, and shall be subject to the terms and conditions of this Agreement, and shall be subject to the terms and conditions of this Agreement.

Section 1.04. Taxes and Instruments of Conveyance

The taxes and instruments of conveyance shall be subject to the terms and conditions of this Agreement, and shall be subject to the terms and conditions of this Agreement, and shall be subject to the terms and conditions of this Agreement.

Drawings and Specifications, as have been approved by the Authority.

i. "Improvements" shall mean the building or buildings and landscaping to be constructed by the Redeveloper pursuant to the Final Working Drawings and Specifications.

j. "Architect" shall mean the firm or firms of registered professional architects who shall hereafter be designated and engaged by the Redeveloper, subject to the approval of the Authority, which approval shall not be unreasonably withheld or delayed, who shall act, pursuant to a contract for architectural services with respect to the Improvements to be erected on the Property, a copy of which contract shall be deposited with the Authority, or such firm or contract as shall be substituted by the Redeveloper with the prior written consent of the Authority.

k. "HUD" shall mean the Department of Housing and Urban Development or any duly authorized representative thereof.

l. "Director" shall mean the Director of the Boston Redevelopment Authority, or any person designated by him to act in his behalf.

m. "Deed" shall mean the instrument, to be recorded with this Agreement in Suffolk County Registry of Deeds in Boston, Massachusetts, whereby the Property is conveyed to the Redeveloper.

n. "Deed Plans" shall mean Exhibit "A" attached hereto.

o. "Closing Date" shall mean the date referred to in Section 204 of this Agreement.

ARTICLE II TRANSFER OF THE PROPERTY AND PAYMENT THEREFOR

Section 201: Covenant of Sale

Subject to all of the terms, covenants and conditions of this Agreement, the Authority agrees to sell and convey and the Redeveloper covenants and agrees to purchase the Property.

Section 202: Condition of Land to be Conveyed

The Authority and the Redeveloper covenant and agree that the Property shall be conveyed in "as is" condition, free and clear of all tenants and occupants, except as may be provided in Section 210 hereof.

Section 203: Purchase Price and Payment Therefor

The purchase price for the Property shall be Two Hundred Thousand Dollars (\$200,000.00) and shall be paid on the Closing Date by certified or bank check drawn to the order of the Authority. With respect to additional future compensation reference is made to Section 302.a.

Section 204: Time of Sale and Conveyance

The sale and conveyance and delivery of possession of the Property and the purchase of the same by the Redeveloper, shall take place at a date as may be agreed upon by the parties no later than 1993, at the office of the Authority at City Hall, Boston, Massachusetts.

Section 205: Title and Instrument of Conveyance

a. The sale and conveyance shall be by Quitclaim Deed of good and marketable fee simple title free and clear of all liens and encumbrances, but subject to and with the benefit of

LAND DISPOSITION AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 1993, by and between the Boston Redevelopment Authority and New England Aquarium Corporation, a Massachusetts corporation.

The parties hereto do hereby agree as follows:

ARTICLE I DEFINITIONS

Section 101: Defined Terms

For the purpose of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

- a. "City" shall mean the City of Boston, Massachusetts.
- b. "Authority" shall mean the Boston Redevelopment Authority, a public body, politic and corporate, organized and existing pursuant to Chapter 121B of the Massachusetts General Laws (Ter. Ed.), as amended, and shall include any successor in interest, whether by act of a party to this Agreement or by operation of law or otherwise.
- c. "Redeveloper" shall mean New England Aquarium Corporation, a non-profit corporation organized under Chapter 180 of the Massachusetts General Laws, and having a place of business in the City of Boston, Commonwealth of Massachusetts, and shall include any successor in interest or assign, whether by act of a party to this Agreement or by operation of law or otherwise, but shall not mean mortgagees or holders of building loan agreements.
- d. The "Property" refers to Parcel A-3N of the Downtown Waterfront-Faneuil Hall Urban Renewal Project Area, bounded by Atlantic Avenue, Milk Street, Central Street and property of the Redeveloper, as more fully described in the Deed Plan to be attached hereto as Exhibit A and made a part hereof.
- e. "Plan" shall mean the Downtown Waterfront-Faneuil Hall Urban Renewal Plan, adopted by the Authority on April 24, 1964, and approved by the City Council Of the City of Boston on June 8, 1964, and as it may be amended in accordance with the provisions therein contained, a copy of which has been delivered to the Redeveloper. The "term of the Plan" shall mean a period of _____ years from and after _____. "Plan Area" shall mean the area in the City of Boston to which the said Plan pertains, as indicated by the boundary descriptions and maps therein.
- f. "Design Proposal" shall mean the drawings, sketches and Plan submitted to the Authority for its approval, showing the general plan, elevations, dimensions and character of the improvements to be erected including any construction and rehabilitation on the Property by the Redeveloper, including type, amount, distribution and area of the various uses on the Property.
- g. "Preliminary Working Drawings and Outline Specifications" shall mean site plans, floor plans, elevations and sections, outline specifications, and models which have been developed to show the detailed architectural character of the improvements to be erected, including rehabilitation, on the Property and their relationship to the approved Design Proposal which shall be submitted to the Authority for its approval.
- h. "Final Working Drawings and Specifications" shall mean complete working drawings and specifications, suitable for bidding, including such drawings and specifications for facade treatment, samples of materials, and a written statement of the differences, if any, from the approved Preliminary Working

all conditions, covenants, easements, and restrictions set forth or referred to in this Agreement and the Plan or in either hereof. Without limiting the foregoing, it is understood and agreed that the Property may be subject to reasonably required surface and subsurface easements taken or to be taken in relation to the Central Artery/Tunnel project, and that the Authority retains and shall have the right to receive and collect any damages on account thereof.

b. The Authority shall make a valid and effective confirmatory taking of the Property prior to the Closing Date.

Section 206: Federal Tax Stamps and Other Closing Costs

The Redeveloper shall pay the, costs of any Federal or State documentary tax stamps which shall be required, and the cost of recording the Deed, this Agreement, and all other instruments and plans to be recorded together with the Deed.

Section 207: Adjustments

The Authority shall pay all taxes, sewer and water charges and other assessments or charges allocable with respect to any period before delivery and conveyance to the Redeveloper of the Deed hereunder. Taxes, charges or assessments allocable with respect to any period after delivery to the Redeveloper of a Deed hereunder shall be paid by the Redeveloper. In the event any Parcel is exempt from taxation on the assessment date next preceding the conveyance hereunder by virtue of title being vested in the Authority or other tax exempt entity, the Redeveloper shall pay the City of Boston, in lieu of a tax adjustment, a pro rata amount of the taxes which would have been payable to the City of Boston if such parcel had not then been exempt from taxation, for that portion of the tax year during which the Redeveloper has title and possession. This payment in lieu of taxes shall be computed using the purchase price as the assumed assessment on the Property and using the tax rate for the current tax year if it is known, and if it is not known, the estimated tax rate established by the City Assessor. All closing costs and adjustments, if any, shall be paid to the Authority upon delivery of the Deed to the Property. The provisions of this Section shall survive delivery of the Deed.

Section 208: Conditions Precedent to Construction

No construction of any building shall be commenced on the Property unless and until the following events have all occurred:

a. Final Working Drawings and Specifications for the Property have been submitted by the Redeveloper and approved by the Authority as provided in Section 302 hereof.

b. The Redeveloper has entered into a contract, satisfactory in form to the Authority, with a construction or building company under which contract such construction or building company shall have full and complete continuing responsibility to the Redeveloper for the construction of the Improvements as required herein, and a copy of this contract has been approved by and deposited with the Authority, which contract shall not be changed without prior written consent of the Authority.

c. The Redeveloper has furnished evidence satisfactory to the Authority that the Redeveloper has the equity capital and commitments for mortgage financing adequate for the construction of the Improvements in accordance with said approved Final Working Drawings and Specifications and the construction contract.

d. The Redeveloper has submitted a Letter of Intent executed by its construction contractor, substantially in the form attached hereto, marked Exhibit "B," and made a part hereof, in which the Contractor undertakes to carry out all of the provisions of this Agreement in the Section entitled "Nondiscrimination in Employment" and the requirements of (i) the Authority's "Equal Opportunity Compliance Policy" adopted February 20, 1969, and (ii) the "Commonwealth of Massachusetts Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program," and (iii) the City of Boston's "Contract Compliance Program."

e. The Redeveloper has obtained a Building Permit from the City of Boston Building Department and has paid all application fees in connection therewith, and the Improvements described in the Building Permit are in accordance with the Final Working Drawings and Specifications approved by the Authority pursuant to Section 302 hereof.

Section 209: Default by Authority

In the event that the Authority shall be unable to give title or to make conveyance or to deliver possession of Parcel A-3N as provided for herein, then all obligations of the parties hereunder shall cease and this Agreement shall be void and the parties without recourse thereunder, unless the Authority shall elect to use reasonable efforts to remove any defect in title or to deliver possession as herein agreed, as the case may be, in which event the Authority shall give written notice thereof to the Redeveloper at or before the time for performance by the Authority hereunder, and thereupon the time for the performance by the Authority shall be extended for a period of ninety (90) days, or such longer period as the Authority and the Redeveloper shall mutually agree; provided, however, that the Redeveloper shall have the election, either at the original or any extended time for performance, to accept such title or possession as the Authority can deliver to Parcel A-3N and to pay therefor without deduction, in which case the Authority shall convey such title to the Redeveloper. In the event that at the expiration of the extended time the Authority shall be unable to give title or to make conveyance or to deliver possession as herein provided; then (1) all obligations of the parties hereto shall cease; and (2) this Agreement shall be void and without recourse to the parties hereto. The acceptance of a Deed by the Redeveloper shall be deemed a full performance and discharge of every agreement and obligation herein contained with respect to the Property, except such as are to be performed after the delivery of the Deed.

Section 210: Condition of Land to be Conveyed

a. The Property shall be conveyed free of all tenants and occupants. It is provided, however, that the Authority and the Redeveloper acknowledge that the Property or a portion thereof is presently used and occupied pursuant to a License granted by the Authority dated November 25, 1977, as supplemented by letter dated August 30, 1989 to the Authority from Lease-It Corporation d/b/a American International Rent-A-Car (the "Licensee"). The Authority and the Redeveloper hereby mutually agree that the Authority as Licensor, at its own discretion and risk, shall have the right to allow said License to remain in full force and effect, and to receive and collect for the Authority's own account all use and occupancy charges and other payments due pursuant thereto, upon the terms and conditions, including the special conditions, set forth in said License, provided that (a) the Authority as Licensor shall enforce all such terms and conditions and the Licensee shall comply therewith, (b) the Authority shall not permit or suffer assignment of said License or exercise thereof by any party other than the above-named Licensee, (c) the Authority as Licensor shall terminate said License, if it has not sooner been terminated, upon approval by the Authority of a development plan of the Property submitted by the Redeveloper,

and the Authority shall cause the Licensee to vacate the Property within thirty days thereafter, and (d) the Redeveloper shall be absolved from and indemnified against any liability arising out of the License or the use and occupancy of the Property by the Licensee.

ARTICLE III
RESTRICTIONS AND CONTROLS UPON REDEVELOPMENT

Section 301: Restrictions on Use

a. The Redeveloper agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, and the Deed shall contain covenants on the part of the Redeveloper for itself, and its successors and assigns, that the Redeveloper, its successors and assigns shall:

1. Devote the Property only to and in accordance with the uses specified in the Plan and this Agreement; and

2. Not discriminate upon the basis of race, color, sex, religion or national origin in the sale, lease or rental or in the use or occupancy of or any Improvements erected or to be erected thereon, or any part thereof.

b. It is intended and agreed, and the Deed shall so expressly provide, that the covenants provided in subsection (a) of this Section shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Authority, its successors and assigns, the City of Boston, and in the case of the covenant provided in subparagraph (2) of subsection (a), the United States, both for and in its or their own right and also to protect the interest of the community and other parties, public and private, in whose favor or for whose benefit the covenants have been provided, against the Redeveloper, its successors and assigns, and every successor in interest to or any part thereof or any interest therein, and any party in possession or occupancy of or any part thereof. It is further intended and agreed that the covenants provided in subparagraph (1) of subsection (a) shall remain in effect for the term of the Plan, or until such date thereafter to which such term may be extended by proper amendment of the Plan. The covenant provided in subparagraph (2) of subsection (a) shall remain in effect without limitation as to time. The terms "uses specified in the Plan" and "land use" referring to provisions of the Plan, or similar language, in this Agreement shall include the land and all buildings, and other requirements or restrictions of the Plan pertaining to such land.

d. If applicable, in order to effectuate the provisions of subparagraph (2) of subsection (a) of this Section and Section 308, the Redeveloper agrees to submit to the Authority all materials regarding its rental program, including but not limited to, advertising matter, brochures, leases, proposals for establishment of rental offices, for review of all aspects of said program which relate to or have an effect upon the selection of tenants. The Redeveloper further agrees to inform the Authority by ten (10) days prior written notice thereof of its intention to permit initial occupancy of the improvements built on the Property, and will not under any circumstances permit such occupancy without the prior written approval of the Authority. The Redeveloper shall not proceed with any aspect of its rental program to which the Authority objects, and agrees to follow all reasonable suggestions of the Authority with respect thereto, provided, however, that the Authority shall not require the Redeveloper to take any action inconsistent with or which impose more burdensome requirements than the terms of any agreement between HUD and the Redeveloper, copies of which shall have been deposited with the Authority.

e. If applicable, the Redeveloper agrees for itself, its successors and assigns, that during construction and

thereafter, the Redeveloper, and its successors and assigns, shall develop and carry out to the Authority's reasonable satisfaction a program of advertising for the sale and/or rental of the whole and any individual parts or parcels of the Property, and shall include in all such advertising (including signs), the legend "An Open Occupancy Building," in type or lettering of easily legible size and design. The word "Project" or "Development" may be substituted for the word "Building" where circumstances require such substitution.

f. If applicable, the Redeveloper agrees for itself, its successors and assigns, that during construction and thereafter, the Redeveloper, and its successors and assigns, shall include in all such advertising for the sale or rental of the Property, a statement to the effect: (a) that the Property is open to all persons without discrimination on the basis of race, color, sex, religion or national origin; and (b) that there shall be no discrimination in public access and use of the Property to the extent that it is open to the public.

Section 302: Improvements and Submission of Plans

a. The Property shall be used for activities in furtherance of the Redeveloper's institutional aquarium, charitable, educational and scientific research purposes, including, but not limited to, open space; exhibit, education and research facilities; automobile, truck and bus parking; loading; food service; sale of aquarium related gifts, books and other merchandise; and for the Allowed Uses specified in Article 42A of the Zoning Code of the City of Boston for the Downtown Waterfront Mixed-Use Subdistrict and such accessory and ancillary uses as are permitted in relation thereto; and for construction of a building or buildings not exceeding a Floor Area Ratio (FAR) of one and one-half (1.5) on the Premises, to be shown upon and built in accordance with the Final Working Drawings and Specifications and the applicable standards and controls of the Plan. In the event that the Redeveloper shall propose to construct a building exceeding FAR of 1.5 on the Premises and the Authority shall approve the same, the Authority shall be entitled to call for the payment of additional compensation for the Property based upon appraisal at the time of such approval of the value of the Property in light of the proposed building.

b. The Redeveloper shall not apply for a building permit for the construction of the Improvements to be erected on the Property without the prior certification of the Authority that the work to be done or completed as set forth in the permit application is in accordance with the Final Working Drawings and Specifications approved by the Authority. No work shall be done on the construction of the Improvements to be erected on the Property unless such work conforms in every respect with such approved Final Working Drawings and Specifications, except and only to the extent that modifications thereof have been requested by the Redeveloper in writing and have been approved in writing by the Authority.

It is agreed that any and all Change Orders issued and implemented subsequent to approval by the Authority of Final Working Drawings and Specifications constitute a deviation from said approved Final Working Drawings and Specifications. The Redeveloper agrees that no such Change Order will be issued or implemented unless such Change Order shall have been submitted to and approved in writing by the Authority prior to its issuance or implementation. If the Authority shall neither approve or disapprove in writing within thirty (30) days of receipt of such Change Order then it shall be treated as having been approved.

In the event the Redeveloper shall fail to comply with the foregoing requirements, the Authority may, within a reasonable time after discovery thereof by the Authority, direct in writing that the Redeveloper so modify or reconstruct such portion or portions of the Improvements erected or being erected on the Property as are not in conformance with the approved Final Working Drawings and Specifications or any

approved modifications thereof, or Change Order therefor as to bring them into conformance therewith. The Redeveloper shall promptly comply with such a directive. In addition to any other remedies available under this Agreement, the Authority may enforce the provisions of this subsection 302 (b) by an action in a court of appropriate jurisdiction to compel specific performance.

c. In submitting all plans and specifications to the Authority for its approval, the Redeveloper shall consider and take into account the planning and design objectives set forth in the Plan and in the Design Proposal, and the Authority shall pursue such objectives in its review of and action upon the plans and specifications so submitted.

d. The Redeveloper shall not discharge the Architect without cause or hire new or additional architects or alter or amend the contract for architectural services between the Architect and the Redeveloper without in each instance obtaining the prior written consent of the Authority. All HUD requirements concerning the employment and services of architects shall also be observed.

e. No sign shall be erected or placed on the exterior of any building on, nor on any portion of which is not enclosed within a building, unless the character, location, design, size, shape, form and lighting of such sign shall have been approved by the Authority in writing. Without limiting in any way the scope of the Authority's review, no sign shall be approved which does not meet the following standards. Signs may only be erected or placed upon the ground floor street facade of each store, if any, or other individual use. No signs will be permitted on awnings or marquee, if any, nor on projections, if any, over the sidewalk. All signs shall be belt type. Flashing, illuminated signs, exposed neon signs or signs other than those relating to businesses on the site, if any, shall not be permitted.

Section 303: Time for Commencement and Completion of Construction

a. The Redeveloper shall begin the construction of the Improvements on the Property in accordance with the approved Final Working Drawings and Specifications not later than ninety (90) days after the approval thereof by the Authority.

b. The Redeveloper shall diligently prosecute to completion the construction of the Improvements on the Property and shall complete such construction not later than twenty-four (24) months from the date of the commencement of construction, or as may be extended by permission of the Authority, which shall not be unreasonably withheld.

c. The Redeveloper shall submit to the Authority for its approval a detailed estimated progress schedule at the time construction is begun in a format generally used in the construction of buildings. This schedule shall be resubmitted each month until the construction of the Improvements has been completed, with actual progress shown in each submission. This monthly submission shall be accompanied by a written report by the Redeveloper citing any adjustments to the progress forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts which shall be reasonably satisfactory to the Authority. After the sale and conveyance and delivery of possession of the Property to the Redeveloper and during the period of the Plan, such work of the Redeveloper shall be subject to inspection by representatives of the Authority, of the City, HUD, and the United States of America, and the Authority shall notify the Redeveloper promptly of any defects observed by it. Upon receipt of such notification, the Redeveloper shall promptly undertake and proceed diligently to cure any such defects to the reasonable satisfaction of the Authority.

d. Prior to the sale and conveyance and delivery of possession of the Property, the Authority shall permit the Redeveloper access thereto, whenever and to the extent necessary to carry out the purposes of this Agreement.

e. It is intended and agreed that the agreements and covenants contained in this Section 303 with respect to the beginning and completion of the Improvements on the Property shall be covenants running with the land. This subsection shall not, however, apply against a mortgagee permitted by this Agreement unless the mortgagee shall elect to complete as permitted in Section 403, in which case the extension provisions of that Section shall apply.

Section 304: When Improvements Completed

The building of Improvements on the Property shall be deemed completed for the purposes of this Agreement when the Improvements required of the Redeveloper by the provisions of this Agreement, the approved Final Working Drawings and Specifications, and any approved modifications thereof, have been built and are ready for occupancy, and shall incontestably be deemed completed for the purposes of this Agreement upon the issuance of a Certificate of Completion by the Authority.

Promptly after completion of the Improvements in accordance with the provisions of this Agreement, the Authority will furnish the Redeveloper with an appropriate instrument so certifying. Such certification by the Authority shall be, and it shall be so provided in the Deed and in the certification itself, a conclusive determination of satisfaction and termination of the Agreements and covenants in this Agreement and in the Deed with respect to the obligations of the Redeveloper and its successors and assigns, to construct the Improvements, provided that such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Redeveloper to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Improvements, or any part thereof on the purchase of the Property.

With respect to such individual parts or parcels of the Property which the Redeveloper is authorized by Section 401 of this Agreement to convey or lease as the Improvements to be constructed thereon are completed, the Authority will also, upon proper completion of the Improvements relating to any such part or parcel certify to the Redeveloper that such Improvements have been made in accordance with the provisions of this Agreement. Such certification shall mean and provide (and the Deed shall so state): (1) that any party purchasing or leasing such individual part or parcel pursuant to the authorization herein contained shall not (because of such purchase or lease) incur any obligation with respect to the construction of the Improvements relating to such part or parcel or to any other part or parcel of the Property; and (2) that neither the Authority nor any other party shall thereafter have or be entitled to exercise with respect to any such individual part or parcel so sold (or in the case of lease, with respect to the leasehold interest) any rights or remedies or controls that it may otherwise have or be entitled to exercise with respect to the Property as a result of a default in or breach of any provisions of this Agreement or the Deed by the Redeveloper or any successor in interest or assign, unless (i) such default or breach be by the purchaser or lessee, or any successor in interest or assign of or to such individual part or parcel with respect to the covenants and obligations required to be assumed pursuant to Section 401 of this Agreement, and (ii) the right, remedy, or control relate to such default or breach. All certification provided for in this Section shall be in such form as will enable them to be recorded in the Registry of Deeds for Suffolk County,

Commonwealth of Massachusetts. If the Authority shall refuse or fail to provide any certification in accordance with the provisions of this Section, the Authority shall, within thirty (30) days after receipt by the Authority of a written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the Improvements in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts it will be necessary, in the opinion of the Authority, for the Redeveloper to take or perform in order to obtain such certification.

The Redeveloper agrees that the Authority shall be under no obligation to issue a Certificate of Completion until such time as the Authority has had a reasonable opportunity to inspect the Improvements constructed pursuant to the provisions of this Agreement, the approved Final Working Drawings and Specifications, and any approved modifications thereof, provided however, that the Authority shall not be required to make an inspection hereunder unless the Redeveloper has requested in writing that the Authority issue a Certificate of Completion.

Section 305: Prompt Payment of Obligations

The Redeveloper shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms and corporations doing any work, furnishing any materials or supplies or renting any equipment to the Redeveloper or any of its contractors or subcontractors in connection with the development, construction, furnishing, repair or reconstruction of any of the Improvements required by this Agreement to be constructed upon the Property.

Section 306: Non-Discrimination in Employment

The Redeveloper, for itself, its successors and assigns, agrees that in the construction of the Improvements in accordance with the provisions of this Agreement.

a. The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, sex, religion or national origin. The Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authority setting forth the provisions of this non-discrimination clause.

b. The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

c. The Redeveloper will send to each labor union or representative of workers with which the Redeveloper has a collective bargaining agreement or other contract of understanding, a notice, to be provided advising the said labor union or worker's representative of the Redeveloper's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Redeveloper will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The Redeveloper, for itself and all successors and assigns, further agrees that in the redevelopment of the property and in all construction activity undertaken with respect thereto, Redeveloper shall use best efforts to pursue and cause the general contractor to pursue the efforts hereinafter described with a goal to employ workers in construction so that the worker hours on a craft-by-craft basis shall be performed as follows:

at least 50% by bonafide City of Boston residents;
at least 25% by minorities; and
at least 10% by women.

Such efforts consist of the following:

i. Redeveloper shall incorporate in every general construction contract management agreement an enumeration of the foregoing worker hour goals and shall impose a responsibility upon the contractor to pursue the efforts enumerated in this Section (e) and to incorporate such worker hour goals in all subcontracts and impose upon all subcontractors the obligation to pursue such efforts;

ii. Authority, Redeveloper, contractor, and every subcontractor shall each designate an individual to serve as affirmative action officer for the purpose of carrying out the efforts to achieve worker hour goals set forth herein;

iii. Contemporaneously with the start of construction, the affirmative action officers and other interested representatives of the Authority, Redeveloper, contractor, and each subcontractor then selected shall hold a pre-job conference with appropriate union representatives of the construction trade unions for the purpose of reviewing the worker hour goals applicable to the Improvements and the manning requirements for construction activity over the life of the construction period;

iv. Each request for qualified construction workers made by an person involved in the construction of the Improvements to a union hiring hall or business agent contain a recitation of such worker hour goals and a request that qualified referees for construction position on the Improvements be selected in the same proration as such goals; provided, however, that if at the time of any such manning requests the requesting party's workforce composition falls short of any one or more of such goals, such manning request shall seek qualified referees in such proration among such categories as would be necessary to more fully achieve such goals. In the event that the union hiring hall or business agent to which or whom such a manning request has been submitted fails to comply with such request, the affirmative action officer of such requesting party shall seek to verify that insufficient workers in the categories specified in such request are then shown on the unemployed list maintained by such union hiring hall or business agent by seeking to obtain an affidavit from the union hiring hall representative or business agent to such effect. Copies of any affidavit so obtained shall be forwarded to the affirmative action officer of the Authority;

v. All persons applying directly to the contractor, or subcontractor for employment in construction on the project who are not employed by the party to whom application is made will be referred to the affirmative action officer of the Authority and a written record of

such referral shall be made, a copy of which shall be sent to such officer; and

vi. In addition to the foregoing, Redeveloper, and its successors and assigns, shall comply as determined by the BRA, with the Mayor's Executive Order on Minority and Women Business Enterprise Development, dated December 17, 1987, and effective December 30, 1987, which sets forth the following standards, relative to contracting with Minority and Women Business Enterprises in all construction activity undertaken with respect to the Property including the procurement of goods and services:

A) at least 15% of the total construction contract amount shall be expended on Minority Business Enterprises;

B) at least 5% of the total construction contract amount shall be expended on Women Business Enterprises.

vii. The Redeveloper shall incorporate in every general construction contract or construction management agreement an enumeration of the foregoing goals and shall impose a responsibility upon the Contractor to submit the following information to the Redeveloper and the Authority prior to the commencement of construction:

A) Projections of the types of work under the proposed contract that the Contractor intends to have performed by subcontract, the types of materials and services that the Contractor intends to have supplied by vendor contract, and an approximate timetable for the execution of such subcontracts and vendor contracts.

B) A completed Minority Business Utilization Form, provided by the Authority, which lists the Minority Business Enterprise which will perform work or supply goods and services, and includes any third-tier or other subcontracts to Minority Business Enterprises. A completed Women Business Utilization Form, provided by the Authority, which lists the goods and services, and includes any third-tier or other subcontracts to Women Business Enterprises. Each Women or Minority Business Enterprise shall be reported on said Form as either performing work or supplying goods or services, but not both.

C) A completed and signed Letter of Intent, in a form established by the Authority, for each Minority or Women Business Enterprise proposed to be used by the Contractor, other than the Contractor itself, which lists the Contract items the Minority or Women Business Enterprise has proposed to perform or supply, and the proposed price for each item.

D) A copy of executed subcontracts and vendor contracts shall be made available to the Authority upon request. No Minority or Women Business Enterprise may be removed from the construction site, nor may any changes be made in the work or supply assignments, or reduction made in the dollar value thereof unless the Contractor proposes to substitute one or more Minority or Women Business Enterprises subject to the Authority's prior approval in order to satisfy the stated requirements of this Section 306.

f. The Redeveloper, for itself and all successors and assigns, further agrees that in redevelopment of the and shall require its general contractor to comply with the Mayor's Executive Order "Encouraging Minority Business Enterprise" dated June 28, 1978 effective July 1, 1978.

g. The Redeveloper will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to the Redeveloper's books, records, and accounts by the Authority, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

h. In the event of the Redeveloper's noncompliance with the non-discrimination clauses of this Section, or with any of the said rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Redeveloper may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

i. The Redeveloper will include the provisions of Paragraphs a) through f) of this Section in every employment contract, whether union or nonunion, and in every other contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of his contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each such contractor, subcontractor, or vendor as the case may be. The Redeveloper will take such action with respect to any construction contract, subcontract, or purchase order as the Authority or the Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Redeveloper becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Authority or the Department of Housing and Urban Development, the Redeveloper may request the United States to enter into such litigation to protect the interest of the United States.

For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of this Section shall be changed to read: "During the performance of this Contract, the Contractor/Subcontractor/Vendor agrees as follows: and the term "Redeveloper" as it appears throughout this Section shall be changed to "Contractor", "Subcontractor", or "Vendor", as the case may be.

Section 307: Access to by Authority and City Personnel

The Redeveloper, its successors and assigns, shall from time to time until the expiration of the term of the Plan, at all reasonable hours, give to the duly authorized representatives of the Authority, the City, and the United States of America, free and unobstructed access for inspection purposes to any and all of the Improvements constructed on the Property by the Redeveloper, its successors and assigns, and to all open areas surrounding the same.

ARTICLE IV
TRANSFER AND MORTGAGE OF REDEVELOPER'S INTEREST

Section 401: General Terms Relating to Transfer of Interest in Property by Redeveloper

a. Prior to the completion of the construction of the Improvements on the Property in accordance with Section 304 of this Agreement, no interest or portion thereof of any partner/stockholder of the Redeveloper (which terms shall be deemed to include successors in interest of such interest), shall be transferred, or caused or suffered to be transferred, except as involuntary transfer caused by the death or incapacity of any such party or except as provided in Section 402 hereof, without the written approval of the Authority; nor without such written approval, shall there be any other change in the ownership of such partnership/stockholder interests or in the relative distribution thereof or change in identity of the parties in control, or in the degree of control of the Redeveloper, by any other methods or means. The Redeveloper shall advise the Authority of any and all such proposed changes in ownership and shall in addition furnish the Authority with an up-to-date list of all present and proposed new owners thereof, setting forth the amounts of such interest owned or to be owned by each owner, and with any other information relating to such proposed change which the Authority shall require.

b. The Redeveloper agrees that it will not, after delivery of the Deed and prior to the completion of the construction of all the Improvements on all parts and parcels of the Property, make or suffer to be made, any assignment, lease, or any other manner of transfer of its interest in or portion thereof, or in this Agreement, except as provided in Section 402, and except that leases of individual rental units within buildings may be entered into provided that rental payments commence only upon completion and certification pursuant to Section 304 of the und leased, unless it shall have complied with the following conditions:

i. The transferee or transferees shall have been approved as such in writing by the Authority.

ii. The transferee or transferees, by valid instrument in writing, satisfactory to the Authority, shall have expressly assumed for themselves and their successors and assigns, and directly to and for the benefit of the Authority, all obligations of any person or persons, including the Redeveloper, to begin, complete, and or maintain and operate, as applicable, the Improvements and all obligations of the Redeveloper provided for in this Agreement including the obligations of performance in accordance with the Plan. Provided, that: the fact that any transferee of, or any other successor in interest whatsoever to the Property, or any part thereof, shall for whatever reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) relieve or except such transferee or successor of or from obligations, conditions, or restrictions, or deprive or limit the Authority of or with respect to any rights or limitations or controls with respect to the Property or the construction of the Improvements; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of or change, with respect to ownership, possession, or control, shall operate legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to and the construction of the Improvements that the

Authority would have, had there been no such transfer or change. In the event of any such transfer without such assumption of obligations, the Redeveloper shall pay to the Authority the expenses and costs of any actions or proceedings instituted to enforce all such obligations, conditions, and restrictions, and all of the Authority's said rights, remedies, and controls as against such transferee. Therefore, in the absence of a specific written agreement by the Authority to the contrary, no such transfer or approval thereof by the Authority shall be deemed to relieve the Redeveloper or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements from any of its obligations with respect thereto.

iii. Any consideration obtained by the Redeveloper from the transferee or transferees in excess of an amount representing the actual cost to the Redeveloper of the Property or interest therein transferred, including the cost of any Improvements made thereon and carrying charges, shall be paid over to the Authority.

iv. There has been submitted to the Authority for review, and the Authority has approved, all instruments and other legal documents involved in effecting transfer.

v. The Redeveloper and its transferee or transferees shall comply with such other conditions as the Authority may find desirable in order to achieve and safeguard the purposes of Chapter 121 B and the Plan.

c. In the event of any violation by such a transferee of any part or parcel of the property of any obligation assumed or required to be assumed under Subsection b of this Section, which violation shall occur prior to receipt of the last and final certificate of completion granted pursuant to Section 304 for the last part or parcel of the Property, the Redeveloper shall be responsible, jointly and severally with the transferee, for curing or effecting the cure of such violation. If the Redeveloper shall fail or refuse to effect such cure, the Authority may institute such actions or proceedings against the transferee and/or the Redeveloper as the Authority deems appropriate, including actions and proceedings to compel specific performance. Payment of all costs and expenses which may be incurred by the Authority in instituting and prosecuting such actions or proceedings shall be governed by Section 601 of this Agreement.

d. After completion of the Improvements, as certified by the Authority, the Redeveloper may assign or otherwise transfer any portion of or interest in the Property, or any interest in the Redeveloper may be assigned or transferred, to the extent permitted by and subject to the provisions of this Agreement and the Plan.

Section 402: Mortgage of Property by the Redeveloper

Notwithstanding any other provisions of this Agreement the Redeveloper shall at all times have the right to encumber, pledge, or convey its rights, title and interest in and to the Property, or any portion or portions thereof, and partners of the Redeveloper, if any, shall have at all times the right to encumber their individual partnership interests, by way of a bona fide mortgage to secure the payment of any loan or loans obtained by the Redeveloper to finance the development, construction, repair or reconstruction of any of the Improvements required to be constructed by the Redeveloper on the Property by the Plan and this Agreement, or to refinance any outstanding loan or loans therefor obtained by the Redeveloper for any such purpose; provided, however, that the Redeveloper and its individual partners, as the case may be, shall give prior written notice to the Authority of its or

their intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such mortgagee(s) and any other information regarding the mortgagee(s) and mortgage documents which the Authority may require.

The holder of any such mortgage (including a holder who obtains title to the Property or any portion thereof by foreclosure or action in lieu thereof, but not including a party who obtains title through such holder or any purchaser at a foreclosure sale other than the holder) shall not be obligated by this Agreement to construct or complete the Improvements or to guarantee such construction or completion, but shall have the options described in Section 403.

Section 403: Rights and Duties of Mortgagee Upon Acquisition Prior to Completion

a. If a mortgagee, through the operation of its contract to finance the Improvements required by this Agreement to be constructed by the Redeveloper on the Property, or by foreclosure, acquires fee simple title to the Property or any part thereof prior to the completion of such Improvements, the mortgagee shall have the following options:

1. complete construction of such Improvements in accordance with the approved Final Working Drawings and Specifications, the Site Plan, the Plan and this Agreement, and in all respects comply with the provisions of this Agreement, or
2. sell, assign, or transfer, with the prior written consent of the Authority, fee simple title to the Property or any part thereof to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Redeveloper under this Agreement in respect of the Property or part thereof, by written instrument satisfactory to the Authority and recorded forthwith in the Suffolk County Registry of Deeds, or
3. reconvey fee simple title to the Property or part thereof to the Authority, in which event the provisions of Section 802 relative to resale shall apply.

b. In the event that a mortgagee elects to complete construction pursuant to (a) (1) above, or sells, assigns or transfers pursuant to (a) (2) above, the Authority shall extend the time limits set forth in Section 303 herein as shall be reasonably necessary to complete construction of the Improvements, and upon such completion, the mortgagee or purchaser, as the case may be, shall be entitled to the Certificate(s) of Completion pursuant to Section 304.

Section 404: Rights and Duties of Mortgagee Upon Acquisition After Completion

If a mortgagee, through the operation of its contract to finance the Improvements required by this Agreement to be constructed by the Redeveloper on the Property, or by foreclosure acquires the mortgage or fee simple title to the Property or any portion thereof after completion of such Improvements, the mortgagee for the period during which said mortgagee holds such title, shall comply with applicable provisions of this Agreement.

ARTICLE V
PROVISIONS RELATING TO OPERATION AND MAINTENANCE

Section 501: Maintenance and Operation of Improvements

The Redeveloper shall, at all times until the expiration of the term of the Plan, keep the Improvements constructed on the Property in good and safe condition and repair unless such

Improvements shall have become uninsurable, and in the occupancy, maintenance and operation of such Improvements, the Property shall comply with the terms and conditions of the Plan and with all laws, ordinances, codes and regulations applicable hereto.

Section 502: Additions or Subtractions to Completed Improvements

After the Improvements required by the Plan and this Agreement to be constructed by the Redeveloper on the Property or any portion thereof have been completed, the Redeveloper shall not, until the expiration of the term of the Plan, reconstruct, demolish, subtract therefrom, make any additions thereto or extensions thereof, or change the materials, design, dimensions of color thereof, if such reconstruction, demolition, subtraction, addition, extension or change will affect in any way the external appearance of public lobbies, arcades, open spaces or landscaping, or the external appearance of any building (including roof and penthouse) without the prior written approval of the Authority. In the event the Redeveloper shall fail to comply with the foregoing requirement, the Authority may within a reasonable time after its discovery thereof, direct in writing that the Redeveloper so modify, reconstruct or remove such portion or portions of the Improvements as were reconstructed, demolished or subtracted from or added to or extended or changed without the prior written approval of the Authority. The Redeveloper shall promptly comply with such a directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition, extension or change until such directive is complied with. Any such reconstruction, demolition, subtraction, addition, extension or change undertaken pursuant to the prior written approval of the Authority shall in all respects be in accordance with and conform to the provisions of the Plan.

ARTICLE VI
INDEMNIFICATION

Section 601: Reimbursement of Authority in Respect of Certain Litigation

The Redeveloper shall pay all reasonable costs and expenses, and the amounts of all judgments and decrees which may be incurred by the Authority in any proceedings brought to enforce the obligations of the Redeveloper set forth in the provisions of this Agreement. It is expressly understood, however, that the mortgagee under any mortgage permitted hereunder shall not be liable to the Authority for any costs, expenses, judgments, decrees or damages which shall have accrued against the Redeveloper except that a mortgagee who becomes a mortgagee after, and who acquires title after the Redeveloper has become liable for any costs, expenses, judgments, decrees or damages, shall be liable for such liabilities.

ARTICLE VII
INSURANCE

Section 701: Insurance Coverage

a. Until the expiration of the term of the Plan, the Redeveloper shall keep all of the insurable property and equipment in respect of the Property insured by fire and extended insurance and additional risk insurance to the same extent and amount which is normally required by institutional mortgagees in the use of similar property and equipment in the City. Such insurance shall be in an amount sufficient to comply with the consurance clause applicable to the location and character of the property or equipment, and, in any event, in amounts not less than eighty per centum (or eighty per centum in the case of extended coverage insurance) of the

current cash value of such property or equipment. All such insurance shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and shall have attached thereto a clause making the loss payable to the Redeveloper, the mortgagee, and, subject to the rights of the mortgagee, the Authority as their respective interests may appear.

b. Each insurance policy shall be written to become effective at the time the Redeveloper becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Redeveloper is subject to such risk or hazard.

c. Certificates of such policies and renewals shall be filed with the Authority.

Section 702: Non-Cancellation Clause

All insurance policies shall provide that any cancellation, change or termination thereof shall not be effective with respect to the Authority until after at least ten (10) days prior notice has been given to the Authority to the effect that such insurance policies are to be cancelled, changed, or terminated at a particular time.

Section 703. Authority May Procure Insurance if Redeveloper Fails to Do So

If the Redeveloper at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the Authority at its option, may procure or renew such insurance, and all amounts of money paid therefor by the Authority shall be payable by the Redeveloper to the Authority; with interest thereon at the rate of twelve per centum (12%) per annum from the date the same were paid by the Authority to the date of payment thereof by the Redeveloper. The Authority shall notify the Redeveloper in writing of the date, purposes, and amounts of any such payments made by it.

Section 704: Redeveloper's Obligations with Respect to Restoration and Reconstruction

a. Whenever any Improvements, or any part thereof, constructed on the Property shall have been damaged or destroyed prior to the expiration of the term of the Plan, the Redeveloper shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claim and any other monies provided for the reconstruction, restoration or repair of any such improvement, shall be deposited in full in a separate account of the Redeveloper or of any mortgagee.

b. The insurance money and any other proceeds so collected shall be used and expended for the purpose of fully repairing or reconstructing the Improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Redeveloper, subject to the rights of any mortgagee of record permitted hereunder and the rights of the Authority.

c. The Redeveloper, with the written approval of the Authority and any mortgagee of record permitted hereunder, may determine that all or any part of any such damage to or destruction of such Improvements shall not be reconstructed, restored, or repaired, and in such event, the proceeds of any

claims against insurers or others arising out of such damage or destruction, to the extent not used for such reconstruction, restoration, or repair shall be retained by the Redeveloper, subject to the rights of such mortgagee and the rights of the Authority.

d. Any reconstruction or repair undertaken pursuant to the provisions of this Section shall in all respects be in accordance with and conform to the provisions of the Plan, the Final Working Drawings and Specifications, and the provisions of this Agreement.

Section 705: Commencement and Completion of Reconstruction

The Redeveloper shall commence to reconstruct or repair any Improvements and equipment on the Property, or any portion thereof, which have been destroyed or damaged prior to the expiration of the term of the Plan, within a period not to exceed six (6) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Redeveloper or any mortgagee (or, if the conditions then prevailing require a longer period, such longer period as the Authority may specify in writing), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within twenty-four (24) months after the start thereof.

ARTICLE VIII

Section 801: Failure or Refusal by Redeveloper to Purchase Fee Simple Title and Accept Possession

If the Redeveloper shall fail or refuse to submit Working Drawings and Specifications satisfactory to the Authority as provided in Section 302 of this Agreement, or shall fail or refuse to submit evidence satisfactory to the Authority that it has the necessary equity capital and commitments for mortgage financing as provided in Section 208 of this Agreement, or shall fail or refuse to complete the purchase and accept possession of the Property upon proper tender of conveyance by the Authority pursuant to this Agreement, or there is any unauthorized change in the ownership or distribution of the relative partnership interests in the Redeveloper or with respect to the identity of the parties in control of the Redeveloper or degree thereof, the Authority shall have the right to retain the deposit, if any, held by it pursuant to this Agreement as full liquidated damages, but not as a penalty, without any deduction or offset whatever and without further liability to the Authority on the part of the Redeveloper; and the Authority may, upon such failure or refusal, in its sole discretion terminate, by fifteen (15) days prior written notice to the Redeveloper, all of its obligations to the Redeveloper hereunder, in addition to retaining such deposit. In the event there is no such deposit, all the remedies available to the Authority under Section 805 of this Agreement shall apply to defaults under this Section 801.

Section 802: Consequence of Breach by Redeveloper With Respect To Commencement and Completion of Construction, Failure to Pay Taxes or Discharge Encumbrances, or Unauthorized Transfers of Interest

If, Prior to Completion of the Improvements:

a. The Redeveloper shall fail to perform its obligations under this Agreement with respect to commencement, diligent prosecution, or completion of construction of Improvements;

b. The Redeveloper shall fail to pay any real estate taxes or assessments on the Property, or any part thereof when due, or shall place or suffer to be placed thereon any

encumbrances or liens other than the mortgage lien(s) authorized by this Agreement; or

c. There is in violation of Sections 401a or 401b of this Agreement a transfer of the Property or any part thereof or a change in the ownership or control of or interests in the Redeveloper;

The Authority shall in writing notify the Redeveloper of such failure or violation. The Redeveloper shall thereupon have ninety (90) days from the receipt by it of such written notice to cure such failure or violation.

i. If the Redeveloper does not cure such failure or violation within the 90-day period (or within such extended period of time as may be established by the Authority acting solely in its discretion) and if the holders of record of building loan agreements and/or first mortgages in replacement thereof do not exercise their rights to cure such violation or failure (as provided in Section 804 hereof), or if this contract is cancelled, terminated or suspended pursuant to Section 306 hereof, the Redeveloper shall promptly transfer possession of, and reconvey, the Property together with all of the Improvements thereon, to the Authority without cost to the Authority, by Quitclaim Deed, provided that such reconveyance (1) shall be subject to any existing building loan agreements and mortgages thereon permitted under this Agreement, and (2) shall not include any parcels with respect to which a Certificate of Completion has been issued pursuant to Section 304. If the Redeveloper shall fail so to reconvey, the Authority may institute such actions or proceedings as d may deem advisable as well as proceedings to compel specific performance and the payment of damages, expenses and costs by the Redeveloper.

ii. In the event of such failure to cure, the Authority shall also have the right to enforce its rights under the surety bond referred to in Section 208.

iii. In the event of a failure to cure under this Section, or if the contract is cancelled, terminated or suspended pursuant to Section 306, the Authority shall also have the right to re-enter and take possession of the Property and to terminate (and revest in the Authority) the estate conveyed by the Deed to the Redeveloper, it being the intent of this, together with other provisions of this Agreement, that the conveyance of the Property to the Redeveloper shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of such failure to cure, the Authority at its option may declare a termination in favor of the Authority of the title, and of all the rights and interests in the Property and that such title, and all rights and interest of the Redeveloper, and any assigns or successors in interest, in the Property, shall revert to the Authority; provided, that such condition subsequent and any reversion of title as a result thereof in the Authority: (1) shall always be subject to and limited by and shall not defeat, render invalid, or limit in any way the lien of any mortgage authorized by this Agreement, or any rights or interests provided herein for the protection of the holders of such mortgages, and (2) shall not apply to Parcels of the Property with respect to which a Certificate of Completion has been issued pursuant to Section 304.

iv. If the Redeveloper or a mortgagee reconveys to the Authority, pursuant to this Section 802 or Section 403, or if the Authority shall re-enter pursuant to this Section 802, the Authority shall undertake with due diligence to resell the Property so reconveyed or which d has so re-entered, and the Improvements thereon, subject to all of the provisions of the Plan; and the proceeds of such resale, together with the net income, if any, derived by the Authority from its operation and

management of the Property subsequent to such reconveyance shall be used:

First: to reimburse the Authority for all costs and expenses reasonably and proximately incurred by the Authority, including the salaries of Authority personnel, in connection with the recapture, management and resale of the Property and all administrative and overhead costs in connection therewith;

Next: to reimburse the Authority for expenditures made or obligations incurred with respect to the making or completion of improvements on or for the Property for which it has not otherwise been reimbursed;

Next: to pay all taxes, payments in lieu of taxes, public charges and other sums owing to the City with respect to the Property up to the time of such resale (or in the event the Property is exempt from taxation during the period of ownership thereof by the Authority, an amount equal to such taxes as would have been payable if the Property were not so exempt); and

Finally:

1. In their respective order of priority to pay any and all mortgage indebtedness authorized by this Agreement and to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the Property, in favor of mechanics, materialmen or subcontractors;
2. To pay or reimburse the Authority for any amounts otherwise owing to the Authority from the Redeveloper;
3. If there is any balance of proceeds remaining, to use the balance of the proceeds to reimburse the Redeveloper for and up to the amount expended by him in the purchase and improvement of the Property less any profit theretofore realized by the Redeveloper from the disposition of any interest in the Property or in any individual part or parcel thereof, and any income realized by the Redeveloper from its use of the Property or such part or parcel, and
4. Any balance remaining shall remain the property of the Authority.

Section 803: Notices of Breaches to Mortgagees

If the Authority gives written notice to the Redeveloper of a default under this Agreement, the Authority shall forthwith furnish a copy of the notice to each of the mortgagees of record of the Property permitted under this Agreement. To facilitate the operation of this Section, the Redeveloper shall at all times keep the Authority provided with an up-to-date list of names and addresses of mortgagees and holders of building loan agreements from whom the Redeveloper has obtained loans as permitted under this Agreement. Any such mortgagee or holder may notify the Authority of its address and request that the provisions of Section 907 as they relate to notices apply to it. The Authority agrees to comply with any such request.

Section 804: Mortgagee May Cure Breach of Redeveloper

If the Redeveloper has received notice from the Authority of a default under this Agreement and such breach is not cured by the Redeveloper before the expiration of the period provided therefor, the holders of record of building loan agreements or mortgages on the Property as permitted under this Agreement may cure any such breach upon giving written notice of their intention to do so to the Authority within ninety (90) days after such holder receives such notice of breach, and shall thereupon proceed with due diligence to cure such breach.

Section 805: Remedies for Other Breaches

It is understood by the parties hereto that in the event any party shall fail to comply with or violate any of the provisions of this Agreement, then the other party hereto may institute such actions and proceedings as may be appropriate, including actions and proceedings to compel specific performance and payment of all damages, expenses, and costs. Neither these remedies nor that class of remedies more particularly described in this Agreement shall be exclusive unless specifically so described, provided, however, that the remedies prescribed in Section 801 for the defaults therein described shall be exclusive.

Section 806: Equal Opportunity Compliance Policy and Breach Thereof

If, at any time prior to the issuance of the final Certificate of Completion pursuant to the terms of Section 304 hereof, the Director shall find that the Redeveloper and/or its General Contractor have failed to comply with the requirements of the Authority's "Equal Opportunity Compliance Policy" and the provisions of Sections 208(e) or 306 hereof, the Director shall issue notice of such finding, setting forth the reasons therefor. Such notice shall be sent registered mail, return receipt requested, to the Redeveloper and its General Contractor.

The Redeveloper and/or its General Contractor shall have the right to appeal such finding to the Boston Redevelopment Authority within thirty (30) days of receipt of the notice thereof. Within thirty (30) days after receipt by the Authority of written notice of the Redeveloper's and/or its General Contractor's intention to appeal said finding, or at the next regular meeting of the Authority, whichever is later, the Authority shall hear such appeal at a public meeting.

Upon the failure of the Redeveloper and/or its General Contractor to appeal the finding of the Director, or upon a determination by the Authority, subsequent to any appeal, that the Redeveloper and/or its General Contractor have failed to comply with the requirements of the Authority's "Equal Opportunity Compliance Policy" and the provisions of Section 208(e) or 306 of this Agreement, the Authority shall have the right to retain the amount deposited with the Authority, if any, pursuant to this Agreement, and still on deposit with the Authority, as full liquidated damages, but not as penalty, without any deduction or offset whatsoever and without further liability to the Authority on the part of the Redeveloper. In the event there is no such deposit, all the remedies available to the Authority under Section 805 of this Agreement shall apply to the defaults described in this Section 806. Nothing herein shall limit the remedies which may be available to private persons affected by such defaults of the Redeveloper.

Upon the failure of the Redeveloper and/or its General Contractor to appeal the finding of the Director, or upon the determination by the Authority, subsequent to an appeal of the finding, that the Redeveloper and/or its General Contractor have failed to comply with the requirements of the Authority's

"Equal Opportunity Compliance Policy" and the terms and provisions of Section 208(e) or 306 of this Agreement, the Director shall send a notice of his finding and any Authority action related thereto to the following:

- a. Secretary, Department of Housing and Urban Development
- b. Regional Administrator, Department of Housing and Urban Development
- c. Commissioner, Federal Housing Administration
- d. Director, Boston Office, Federal Housing Administration
- e. Massachusetts Committee Against Discrimination in Housing
- f. Association of General Contractors
- g. The Building Trades Council
- h. Mayor, City of Boston
- i. Mortgagee, and
- j. Such other interested parties as the Director may deem appropriate.

ARTICLE IX MISCELLANEOUS PROVISIONS

Section 901: Obligations and Rights and Remedies Cumulative and Separable

The respective fights and remedies of the Authority, the City of Boston, and the Redeveloper, whether provided by this Agreement, or by law, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

Section 902: Finality of Approvals

Where, pursuant to this Agreement, any document or proposed action by the Redeveloper is submitted by it to the Authority, and the Redeveloper has been notified in working by the Authority that the same is approved or is satisfactory, such determination shall be conclusively deemed to be a final determination by the Authority with respect to such particular document or proposed action for which such approval or notice of satisfaction was given.

Where the consent or approval of the Authority is required hereunder, such consent or approval shall not be unreasonably withheld.

Section 903: How Agreement Affected by Provisions Being Held Invalid

If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the requirements of applicable laws, and all agreements entered into pursuant thereto, and of the Plan.

Section 904: Covenants to be Enforceable by Authority and United States

The covenants herein contained, which are expressed to be covenants running with the land, shall be stated or incorporated by reference in any instrument of conveyance or lease relating to the Property or any portion thereof or any interest herein and shall in any event and without regard to

technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, the Authority (and the United States in the case of the covenants provided in Section 301 (a)(2) hereof against the Redeveloper (including its successors and assigns to or of the Property or any part thereof or any interest therein and any party in possession or occupancy of the Property or any part thereof. In amplification, and not in restriction of the provisions hereof, it is intended and agreed that the Authority shall be deemed a beneficiary of the covenant provided in Section 301 (a)(2) hereof, both for and in its own right and also for the purpose of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such covenants have been provided, and such covenants shall be in force and effect, without regard to whether the Authority or the United States has at any time been, remains or is an owner or in possession of any land to, or in favor of, which the covenants relate.

It is the intention of the Authority that the benefit of the covenants running with the land which are contained in any instrument of conveyance relating to the Property shall be enforceable only by the Authority (and the United States in the case of the covenant provided in Section 301 (a)(3) hereof and those holding title to an interest in the Property and that such covenants shall not be enforceable by transferees of other land owned by the Authority in the area covered by the Plan.

Section 905: Parties Barred From Interest in Project

No member of the Congress of the United States of America shall be admitted to any share or part hereof, or to any benefit to arise therefrom.

Section 906: Authority's Members and Officers Barred From Interest

a. No member, official or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement or the Redeveloper, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official or employee of the Authority shall be personally liable to the Redeveloper or any successor in interest in the event of any default or breach by the Authority or for any amount which may become due to the Redeveloper or to its successors or on any obligations under the terms of this Agreement.

b. After the date hereinabove first written, the Redeveloper shall not, without a prior finding by the Authority that such action is consistent with the public interest, employ in connection with its obligations under this Agreement, any person who has participated in the planning or execution of the Plan or related Project and who is named on any list which may be furnished by the Authority to the Redeveloper as having so participated, or permit any such person to directly or indirectly acquire an interest (except an interest based upon the ownership of its capital stock if such stock is publicly held or offered) in the Redeveloper or in the Property prior to the completion of the Improvements thereon in accordance with this Agreement and the Plan.

c. The Redeveloper covenants that it has not employed or retained any company or person (other than a full-time bona-fide employee working for the Redeveloper) to solicit or secure this Agreement, and that he has not paid or agreed to

pay any company or person any percentage, or brokerage fee, contingent upon or resulting from the execution of this Agreement.

Section 907: Approvals and Notices

Except as otherwise specifically provided in this Agreement, whenever under this Agreement approvals, authorizations, determinations, satisfactions, or waivers are required or permitted, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing signed by a duly authorized officer of the Authority or Redeveloper, and shall be deemed given when deposited in the United States mail and sent registered or certified, postage prepaid, to the principal office of the party to whom it is directed, which is as follows:

Redeveloper: Central Wharf
Boston, MA 02110-3309

Authority: City Hall
Boston, Massachusetts 02201

The parties shall promptly notify each other of any change of their respective addresses set forth above.

Notice and other communications to mortgagees and holders of construction loan agreements shall be deemed given when deposited in the United States mail and sent registered or certified, postage prepaid, to the last known address of the party concerned. Any requests for approvals made by the Authority to the Re-Developer where such approvals shall be deemed granted after a period of non-reply by the Authority shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in boldface type:

"NOTICE
THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY. FAILURE TO
RESPOND WITHIN ____ BUSINESS DAYS SHALL RESULT IN AUTOMATIC
APPROVAL."

Section 908: Matters to be Disregarded

The titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 909: Obligations to Continue

Except as to obligations to be performed at or prior to the time of closing of the sale and conveyance of fee simple title to and delivery of possession of the Property, the provisions of this Agreement shall survive the time of closing and the sale and conveyance of fee simple title to and the delivery of possession of the Property to the Redeveloper, but shall not survive issuance of the Certificate of Completion by the Authority except to the extent stated herein or in the Deed.

Section 910: Excusable Delays

For the purposes of any of the provisions of this Agreement, neither the Authority nor the Redeveloper, as the case may be, shall be considered in breach of or default in its obligations with respect to the preparation of the Property for redevelopment, or the beginning and completion of construction of the Improvements, or progress in respect thereto, in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not restricted to, acts of

God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, or other casualties, epidemics, quarantine restrictions, labor disputes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Authority with respect to the preparation of the Property for redevelopment or of the Redeveloper with respect to construction of the Improvements, as the case may be, shall be extended for the period of the enforced delay. Provided, that the party seeking the benefit of the provisions of this Section shall, within a reasonable period after the beginning of any such enforced delay, have first notified the other party thereof in writing stating the cause or causes thereof and requested an extension for the period of the enforced delay. In calculating the length of the delay, the Authority shall consider not only actual work stoppages but also any consequential delays resulting from such stoppages as well. In no event shall any financing difficulty or inability to secure a building permit be a cause for an extension hereunder. Failure to secure a building permit pursuant to Section 210 hereinabove shall, only with the concurrence of the Authority, be cause for such extension.

Section 911: Advertising

The Redeveloper agrees for itself, its successors, and assigns, that during construction and thereafter the Redeveloper, and its successors and assigns, shall include in all advertising for the sale or rental of the Property a statement to the effect (a) that the Property is open to all persons without discrimination on the basis of race, religion, sex, color or national origin and (b) that there shall be no discrimination in public access and use of the Property to the extent that it is open to the public. Without limiting the foregoing, the Redeveloper shall include in all advertising (including signs) for sale and rental of the whole or any part of the Property the legend "An Open Occupancy Building" in type or lettering of easily legible size and design.

Section 912: Agreement Binding on Successors and Assigns

The respective provisions of this Agreement, in accordance with their terms, shall be binding upon, and shall inure to the benefit of the successors and assigns of the Redeveloper and the public body or bodies succeeding to the interests of the Authority, and to any subsequent grantees of the Property.

Neither the Redeveloper nor any successor in title to the Property shall be liable for any breach hereof accruing after the period during which it was owner of the Property, except, with regard to the parcel(s) conveyed pursuant to Subsection (c) of Section 401 of this Agreement, such liability shall cease only upon issuance of the Certificate of Completion pursuant to Section 304 of this Agreement. No holder of any mortgage on the Property shall be deemed to be the owner thereof until it shall have foreclosed the mortgage thereon or shall have acquired title by deed in lieu of foreclosure.

The Authority agrees to look only to the assets of the Redeveloper and not to the assets of any general or limited partner of the Redeveloper in the event of any breach by the Redeveloper of its obligations hereunder, it being understood that in no event shall the assets of any general or limited partner of the Redeveloper, other than their interest in the Property, be subject to liability for any such breach.

Section 913: Amendment of Plan

No modification or amendment to any provisions of the Plan shall be effective with respect to the Property, unless such

modification or amendment of the Plan has been consented to by the Redeveloper and everyone entitled to be given notice under Section 803 prior to becoming effective with respect to the Redeveloper.

Section 914: Waivers

Any right or remedy which the Authority or the Redeveloper may have under this Agreement, or any of its provisions, may be waived in writing by the Authority or the Redeveloper, as the case may be, without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not specifically waived, and no waiver by the Redeveloper of a right under Section 801 or 802 shall be effective unless approved in writing by everyone then entitled to be given notice under Section 803.

IN WITNESS WHEREOF, on the _____ day of _____, 1993, at Boston, Massachusetts, the parties hereto have caused this Agreement in five counterparts to be signed, sealed and delivered by their duly authorized officers or representatives, respectively.

Signed, sealed and delivered
in the presence of:

BOSTON REDEVELOPMENT AUTHORITY

Director

By _____

By _____

Approved as to form:

Assistant General Counsel

NEW ENGLAND AQUARIUM
CORPORATION

By _____

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston _____, 1993

Then personally appeared before me the above-named
who executed the foregoing Agreement on behalf of the Boston
Redevelopment Authority and acknowledged the same to be the
free act and deed of said Authority.

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston

_____, 199_

Then personally appeared before me the above-named

who executed the foregoing Agreement on behalf of said New
England Aquarium Corporation and acknowledged the same to be
the free act and deed of said corporation.

Notary Public
My commission expires:

6643v

